

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

- - - - - x
STATE OF MARYLAND, :
 :
 v. : Criminal No. K-2008-000116
 :
 ASKEW W. GATEWOOD, JR., :
 :
 Defendant. :
- - - - - x
STATE OF MARYLAND DEPARTMENT :
OF THE ENVIRONMENT, :
 :
 v. : Civil No. C-2007-127156
 :
 ASKEW W. GATEWOOD, JR., :
 :
 Defendant. :
- - - - - x
ANNE ARUNDEL COUNTY, MARYLAND, :
 :
 v. : Civil No. C-2007-127157
 :
 ASKEW W. GATEWOOD, JR., et al., :
 :
 Defendants. : Annapolis, Maryland
- - - - - x June 2, 2008

TRIAL

WHEREUPON, proceedings in the above-entitled matter
commenced.

BEFORE: THE HONORABLE EUGENE M. LERNER, Judge

APPEARANCES:
FOR THE STATE:

BERNARD PENNER, ESQ.
JAY E. ROBINSON, ESQ.
ADAM D. SNYDER, ESQ.
Office of the Attorney General
Environmental Crimes Unit
1800 Washington Boulevard, Suite 6115
Baltimore, Maryland 21230

CompuScribe
(301)577-5882

FOR THE COUNTY:

ROBERT J. SAGER, ESQ.
Office of Law
2660 Riva Road, 4th Floor
Annapolis, Maryland 21401

FOR THE DEFENDANTS:

JOHN F. DAUGHERTY, ESQ.
MAX HIGGINS LAUTEN, ESQ.
Kramon & Graham, P.A.
Commerce Place, Suite 2600
One South Street
Baltimore, Maryland 21202

HARRY L. CHASE, ESQ.
1190 West Northern Parkway, Suite 124
Baltimore, Maryland 21210

I N D E X

	<u>Page</u>
Agreement in Case No. C-2007-127156	6
Agreement in Case No. C-2007-127156	7
Plea Agreement in Case No. K-2008-000116	8
Court and Defendant Re: Advice of Rights	13
Statement of Facts	16
Verdict	22
Sentence Imposed	27

Keynote: "---" indicates inaudible in the transcript.

1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Good morning. Please be seated.

4 (A chorus of "Good morning, Your Honor.")

5 MR. PENNER: As a preliminary matter, Your Honor --

6 THE COURT: Let me first get everybody to -- let me
7 call the cases. We'll call the case of State of Maryland
8 versus Askew W. Gatewood, Jr. This is Case No. 02-K-08-000116.

9 Yes, sir. Now I think if you would all identify
10 yourselves for the record.

11 MR. PENNER: Good morning, Your Honor. For the
12 record, my name is Bernard Penner. I'm Assistant Attorney
13 General assigned to the Environmental Crimes Unit here
14 representing the State in this matter.

15 MR. ROBINSON: I'm Jay Robinson, Assistant Attorney
16 General, Environmental Crimes Unit, as co-counsel for the
17 State.

18 MR. SAGER: I'm Robert Sager here on behalf of Anne
19 Arundel County. There's a separate case that I believe is
20 going to be brought up before Your Honor.

21 THE COURT: Well, let me call that case, also. Anne
22 Arundel County, Maryland, versus Askew W. Gatewood and others,
23 Case No. 02-C-07-127157. And then there's the State of
24 Maryland Department of Environment versus Askew W. Gatewood,
25 Jr., Case No. 02-C-07-127156.

1 Yes, sir. And your name for the record? Robert
2 Sager?

3 MR. SAGER: Robert Sager, Your Honor, here on behalf
4 of Anne Arundel County.

5 THE COURT: That's S-a-g-e --

6 MR. SAGER: S-a-g-e-r.

7 THE COURT: All right. Yes, sir.

8 MR. SNYDER: Adam Snyder, Assistant Attorney
9 General, on behalf of the Maryland Department of the
10 Environment appearing in the 127156 matter.

11 THE COURT: Over here on this side?

12 MR. DOUGHERTY: Good morning, Your Honor. John
13 Dougherty of Kramon and Graham on behalf of Mr. Gatewood in all
14 three matters.

15 THE COURT: All right.

16 MR. LAUTEN: Max Lauten, Your Honor, Kramon and
17 Graham, also on behalf of Judge Gatewood.

18 THE COURT: Now how do you spell your last name?

19 MR. LAUTEN: L-a-u-t-e-n.

20 THE COURT: L-a-u-t-e-m.

21 MR. LAUTEN: N.

22 THE COURT: N. All right.

23 MR. CHASE: Your Honor, Harry L. Chase on behalf of
24 Judge Gatewood in all three matters, Askew Gatewood.

25 THE COURT: All right. Having taken care of that,

1 I'll be glad to hear you, sir.

2 MR. PENNER: Your Honor, as a preliminary matter,
3 since we have three cases to be resolved this morning, we have
4 all agreed that probably the MDE case should be handled first,
5 followed by the county case, and then finally the criminal
6 matter.

7 THE COURT: All right.

8 MR. SNYDER: Your Honor, Adam Snyder on behalf of
9 the Department of the Environment. The Department and the
10 defendant, Judge Askew W. Gatewood, Jr., have reached an
11 agreed-upon resolution of the 127156 matter that we have
12 memorialized in a consent decree that we would like at this
13 time to submit to Your Honor for your review and signature, if
14 you find it acceptable, resolving that civil matter.

15 May I approach?

16 THE COURT: All right, sir. Everyone has signed it?

17 MR. SNYDER: That is correct, Your Honor.

18 MR. : Yes, sir.

19 THE COURT: Did you want to voir dire Mr. Gatewood
20 at all?

21 MR. : Regarding the consent decree, Your
22 Honor?

23 THE COURT: Yes, sir.

24 MR. : No, I don't think it's necessary
25 regarding the consent decree, Your Honor.

1 THE COURT: All right. Today is the 2nd of June.

2 MR. : It is.

3 THE COURT: I have signed the decree.

4 MR. SNYDER: Thank you, Your Honor.

5 THE COURT: All right. Mr. Sager?

6 MR. SAGER: Good morning, Your Honor. I'm Robert
7 Sager on behalf of Anne Arundel County in the matter of 07-
8 127157. The County and Judge Gatewood have worked out a
9 consent judgment to be entered that disposes of all the counts
10 and the issues of fines.

11 If I may approach?

12 THE COURT: Yes, sir.

13 MR. SAGER: All the parties have signed.

14 (Pause.)

15 THE COURT: Did you wish to voir dire him?

16 MR. : I'm sorry, Your Honor. Again, on
17 this civil one, the consent judgment in 127157, it's not
18 necessary.

19 THE COURT: All right.

20 MR. : Thank you, Your Honor. And we do
21 consent to that judgment.

22 THE COURT: Okay. The Court has signed it.

23 MR. SAGER: Thank you, Your Honor.

24 THE COURT: All right. I've signed it. Do you all
25 wish to be excused or do you want to remain? It's up to you.

1 MR. SAGER: I can wait, Your Honor, for the other
2 matter.

3 THE COURT: Okay.

4 MR. SAGER: I don't mind staying.

5 THE COURT: Okay. Then we're ready to proceed with
6 K-08-000116. Right?

7 MR. PENNER: That's correct, Your Honor.

8 THE COURT: Okay.

9 MR. PENNER: Your Honor, this matter has been the
10 subject of plea negotiations. And the State and the defendant
11 have entered into an agreement concerning the disposition of
12 these charges. That agreement has been reduced to writing.
13 And I could provide a copy with the Court with the original
14 signed plea agreement. If the Court would like, I could
15 verbally put on the record the terms of the agreement.

16 THE COURT: All right, sir. You may.

17 MR. PENNER: This matter will proceed by way of the
18 defendant entering a not guilty plea to the first count of the
19 criminal information charging filling of a state wetland
20 without a license. We will proceed by way of an agreed
21 statement of facts that has also been signed and will be
22 submitted for the record.

23 Following a finding of guilt, both the State and the
24 defendant agree that we will ask the Court to place the
25 defendant on one-year unsupervised probation with two special

1 conditions of probation being, first, that the defendant shall
2 complete all work required by the site remediation plan
3 submitted by the defendant, hereafter referred to as the site
4 remediation, and approved by the Maryland Department of the
5 Environment Water Management Administration and the United
6 States Army Corps of Engineers.

7 This plan is specifically incorporated into this
8 agreement by reference. The work shall be completed according
9 to the specifications described in the approved site
10 remediation plan. And the completion of the work shall be
11 confirmed by both MDE and the code compliance program of the
12 Anne Arundel County Department of Inspections and Permits.

13 The second special condition that we are going to
14 ask the Court to impose on this probation is that the defendant
15 shall pay a \$10,000 civil fine on the day of sentencing to
16 satisfy the penalty portion of the consent decree resolved in
17 the civil complaint captioned State versus, an historic
18 caption, MDE versus Gatewood and others, filed in the Anne
19 Arundel County Circuit Court, Case No. C-07-127156.

20 It's my -- well, in the event the defendant does not
21 have that amount of money today, we will request a suspended --
22 that the amount of suspended. However, it's my understanding
23 that the money is here. So we don't need to go into that.

24 Following the imposition of sentence according to
25 the terms set forth above, the State will enter a nol pros to

1 the remaining counts of criminal information, K-08-116. Should
2 the defendant file a timely motion to modify or reduce sentence
3 pursuant to Maryland Rule 4-345, the State will remain silent
4 on said motion provided that the defendant has successfully
5 completed all the special conditions of his one-year probation,
6 including the payment of the above-described civil fine.

7 The defendant affirms and understands that this
8 agreement does not resolve any pending enforcement actions by
9 the United States Army Corps of Engineers or Anne Arundel
10 County. The Maryland Department of the Environment Water
11 Management Administration shall monitor the defendant's
12 compliance with the special conditions.

13 And that's the sum and substance of the plea
14 agreement, Your Honor.

15 THE COURT: So the sentence is just -- it is the
16 one-year unsupervised probation.

17 MR. PENNER: That is correct, specifically with the
18 two special conditions articulated.

19 THE COURT: And if those conditions are violated,
20 then what?

21 MR. PENNER: If those conditions are violated, the
22 defendant's motion for reduction of sentence, the State will
23 oppose the reduction of sentence.

24 THE COURT: Well, I guess what I'm trying to drive
25 at, suppose that none of these -- suppose he doesn't comply at

1 all with any? You're satisfied with that.

2 MR. PENNER: Correct. In the --

3 THE COURT: Generally what I do is impose a sentence
4 and suspend it.

5 MR. PENNER: That's correct. But that is not a
6 portion of this agreement.

7 THE COURT: That's not that agreement.

8 MR. PENNER: That's correct. And the -- what's
9 envisioned here, Your Honor, is that the defendant has
10 stipulated penalties from the State consent decree. And there
11 are also added penalties, I believe, to the County decree. And
12 the defendant's finding of guilt will stand. And that, we feel
13 under these circumstances, is sufficient.

14 THE COURT: Mr. Dougherty --

15 MR. DOUGHERTY: Mr. Lauten was going to --

16 THE COURT: -- or Mr. Lauten? I'm sorry.

17 MR. LAUTEN: May I have a moment, Your Honor?

18 THE COURT: Yes, sir.

19 MR. LAUTEN: And if I may approach with the
20 original?

21 THE COURT: Sure.

22 MR. LAUTEN: Your Honor, may I have a moment with
23 counsel?

24 THE COURT: Sure.

25 (Pause.)

1 MR. LAUTEN: Your Honor, if I may?

2 THE COURT: Yes, sir.

3 MR. LAUTEN: Just to clarify --

4 THE COURT: This is Mr. Sager.

5 MR. LAUTEN: This is Mr. Sager in the County code
6 case.

7 THE COURT: Yes, sir.

8 MR. LAUTEN: It just sounded like you were concerned
9 about what would happen if he didn't -- this is something
10 separate, but the County case, there would be something if he
11 didn't meet -- there are stipulated penalties.

12 THE COURT: No, I understand.

13 MR. LAUTEN: --- bring the action back for
14 contempt.

15 (Pause.)

16 MR. LAUTEN: Your Honor, we are ready to proceed.

17 THE COURT: All right. It's my understanding
18 you're agreeable to the terms that have been expressed by
19 Mr. Penner.

20 MR. LAUTEN: Yes, Your Honor. There is one
21 variation in the terms that I think Mr. Penner is agreeable to,
22 and that is the defense can request probation before judgment
23 today. The State does not agree to remain silent as to that
24 today. If there's a motion to modify and the work is
25 completed, the State will remain silent at that time.

1 THE COURT: I see. Is that all right?

2 MR. PENNER: Yes, Your Honor.

3 THE COURT: All right. Are you withdrawing all your
4 motions you previously made?

5 MR. PENNER: Yes, Your Honor.

6 THE COURT: All right. Mr. Gatewood, would you
7 stand, please, sir?

8 THE DEFENDANT: (Complies.)

9 THE COURT: Would you state your full name for the
10 record?

11 THE DEFENDANT: My name is Askew Gatewood.

12 THE COURT: Yes, sir. And how old are you?

13 THE DEFENDANT: Fifty-seven.

14 THE COURT: And how far did you complete in
15 school?

16 THE DEFENDANT: Law school.

17 THE COURT: And do you understand that you have an
18 absolute right to a jury trial?

19 THE DEFENDANT: I do.

20 THE COURT: And do you understand that a jury trial
21 will be a trial by people selected from a cross section of the
22 citizens of this county?

23 THE DEFENDANT: I do.

24 THE COURT: And do you understand that there are 12
25 jurors and that all 12 jurors would have to agree unanimously

1 before you could be found guilty of any crime, but in a court
2 trial, the trial judge alone can find you guilty?

3 THE DEFENDANT: Yes.

4 THE COURT: And do you understand that such trial
5 jurors, in order to find you guilty of any crime would have to
6 do so beyond a reasonable doubt and to a moral certainty, which
7 is the same standard required of this Court sitting without a
8 jury?

9 THE DEFENDANT: I do.

10 THE COURT: Knowing all of this, do you still wish
11 to be tried by the Court sitting without a jury?

12 THE DEFENDANT: Yes.

13 THE COURT: And have you had an opportunity to
14 discuss the election of a non-jury trial with your counsel?

15 THE DEFENDANT: I have.

16 THE COURT: And did counsel advise you as to what
17 rights you were giving up when you chose a non-jury trial over
18 a jury trial?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you now under the influence of any
21 alcoholic beverage, drugs, narcotics, or medicines which
22 prevent you from understanding what you're doing now?

23 THE DEFENDANT: No.

24 THE COURT: Are you aware of any mental condition or
25 disability which prevents you from understanding what you're

1 doing now?

2 THE DEFENDANT: I am not.

3 THE COURT: Do you have any questions about anything
4 I've said or anything about these proceedings?

5 THE DEFENDANT: I don't.

6 THE COURT: Using the reasonable doubt standard, the
7 Court finds that the accused has affirmatively, knowingly, and
8 intelligently waived his right to a jury trial.

9 Now as I understand it, you are proceeding on a not
10 guilty statement of facts. Is that correct?

11 MR. PENNER: That's correct, Your Honor.

12 THE COURT: Do you have any voir dire with regard to
13 that matter?

14 MR. : Yes, briefly, Your Honor.

15 Mr. Gatewood, you understand that in addition to
16 your right to a jury trial, as the Court has explained
17 previously, you have the right to proceed by way of trial today
18 and require the State to put on evidence and meet its burden of
19 proof.

20 THE DEFENDANT: Yes, sir.

21 MR. : And you understand that as part of
22 that, the State would be required to actually call witnesses to
23 the witness stand, and those witnesses could be cross-examined
24 by your counsel.

25 THE DEFENDANT: Yes.

1 MR. : In addition to that, you understand
2 that you would have the right to call witnesses on your behalf.
3 And if they did not appear voluntarily, the Court would issue
4 subpoenas so that you could require witnesses to appear on your
5 behalf.

6 THE DEFENDANT: I do.

7 MR. : And you understand that if you
8 elected to do so, you could testify in your own defense in this
9 case. And conversely, if you elected not to testify, upon
10 request, the Court would instruct the jury not to draw any
11 adverse inference from the fact that you elected not to
12 testify.

13 THE DEFENDANT: Yes.

14 MR. : And you understand that by
15 proceeding with a statement of facts rather than a trial, you
16 are giving up all those rights.

17 THE DEFENDANT: I do.

18 THE COURT: And do you understand that in 99.999
19 percent of the time you are found guilty?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. You may be seated, sir.

22 THE DEFENDANT: (Complies.)

23 THE COURT: We will receive the statement.

24 MR. PENNER: In the matter of State versus Askew W.
25 Gatewood, if we were to proceed to trial, the State would

1 present evidence to establish the following facts beyond a
2 reasonable doubt. All these facts and events occurred in Anne
3 Arundel County, Maryland.

4 Eugene Patterson will testified that he is the code
5 compliance supervisor for the Anne Arundel County Department
6 of Inspections and Permits. On October 13, 2006, in response
7 to an anonymous complaint that some dump truck loads of old
8 building material had been dumped at 8401 Bay Road, he went
9 to that address in Pasadena, Anne Arundel County, to
10 investigate.

11 He first determined that no construction or grading
12 permits had been issued for the property. And then he went to
13 investigate the complaint. The entrance gate was closed and
14 locked when he arrived. He rang the gate bell, but no one
15 answered.

16 From the gate, he was unable to see the shoreline of
17 the property. And he could not observed any old building
18 material. He returned to 8401 Bay Road and walked down a set
19 of steps that descend the embankment onto the shoreline. He
20 then walked along the high tide line where he could observe the
21 old building material close up. From that location, he took
22 photographs documenting the nature of the unauthorized
23 material.

24 Patterson will further testify that he observed the
25 material had been placed in the water along the shoreline and

1 up over the bank. As such, it was in the 100-foot critical
2 area buffer. Because the material was not of the type that
3 would be approved as proper shoreline revetment and because
4 there was no silt fencing or other sediment controls in place
5 at all, Patterson issued a stop work order, which he posted on
6 the locked gate.

7 He then called his office to determine who owned the
8 property and learned that the property belongs to the
9 defendant, Askew W. Gatewood, Jr. Patterson will testify that
10 over the next few days he continued his investigation. He
11 notified the Maryland Department of the Environment Water
12 Management Administration of the apparent violation, as well as
13 the Army Corps of Engineers.

14 He also made several telephone calls to the
15 telephone number listed for the defendant. The defendant
16 gave Patterson permission to enter the property. On October
17 20, 2006, he returned to the property. Patterson took
18 another set of photographs documenting his observations on
19 that second occasion, when he had access to the top of the
20 fill site.

21 Patterson will testify that following Hurricane Fran
22 back in 1996 the shoreline along the defendant's property at
23 8401 Bay Road had been repaired. And that work had been
24 authorized by the State of Maryland.

25 Furthermore, Anne Arundel County Inspector Vernon

1 Murray had inspected that work in 1997 and confirmed that the
2 shoreline repair stayed within the scope of work approved by
3 the state authorization. Upon completion of the work in
4 January of 1998, the defendant and others sent Mr. Murray a
5 letter of appreciation for assistance on the project. The 1996
6 authorization ended when the work was completed in 1997.

7 On October 24, 2006, Patterson took aerial
8 photographs of the shoreline. He also obtained county records,
9 aerial shoreline survey photographs, of that shoreline around
10 8401 Bay Road as it existed in the year 2005. Using global
11 positioning technology, he then had a 2007 shoreline survey
12 photograph that shows the 2006 filling activity superimposed
13 over the 2005 photograph.

14 The shoreline survey photographs reveal that the
15 2006 filling activity extended the shoreline around 8401 Bay
16 Road out beyond the shoreline that existed in 2005. Patterson
17 will testify that the material placed on the shoreline of 8401
18 Bay Road in October 2006 filled state wetland.

19 Kevin Weiss will testify that he is the acting
20 district manager for the Maryland Department of the Environment
21 Water Management Administration's compliance program's central
22 region. On October 16, 2006, Weiss went to 8401 Bay Road
23 following up on information provided by an anonymous complaint
24 and confirmed by the Anne Arundel County Department of
25 Inspections and Permits. The property was fenced. The gate in

1 front of the driveway was locked.

2 Weiss saw the stop work order posted on the gate but
3 could not see any construction activity. He returned to his
4 office and was advised that the defendant had given permission
5 to go onto his property. On October 18, 2006, together with
6 Maryland Department of the Environment Solid Waste Program
7 Inspector Brian Baumgartner and Compliance Section Head Brian
8 Covlantz, Division Chief Weiss visited the site on a DNR boat,
9 which tied up at the pier.

10 Weiss observed that tons of concrete and
11 construction debris were in the fill material. The fill
12 material rubble was spread along approximately 520 linear feet
13 of shoreline, 50 feet of which appeared to be on a neighboring
14 property on the Patapsco side of the point. The amount of
15 recent fill and rubble was placed in state wetlands and ranged
16 in widths from 16 feet out to nearly 50 feet, the 50-foot
17 portion being near an exiting pier that ran out into Stoney
18 Creek.

19 Weiss also observed that originally the shoreline
20 had broken concrete with quarry stone-placed revetment on top
21 of that. The recent fill material was added on top of the
22 quarried stone running out into the channel. Weiss will
23 testify that he checked the records of the Maryland Department
24 of the Environment and determined that no authorization for
25 this filling existed.

1 Tracy McLeif will testified that she is employed by
2 the United States Army Corps of Engineers as a civilian office
3 engineer. On October 16, 2006, based on information she had
4 received from the Maryland Department of the Environment and
5 the Anne Arundel County Department of Inspections and Permits,
6 she checked the records of the Corps and determined that no
7 United States Army Corps of Engineers permits had been issued
8 for filling activity in the navigable and/or tidal waters of
9 the United States at the confluence of Stoney Creek and the
10 Patapsco River at the mouth of Baltimore City Harbor.

11 After receiving the defendant's permission to go
12 onto the property, Ms. McLeif took photographs and measurements
13 of the affected area and determined that in fact unpermitted
14 filling activity had taken place.

15 It is further agreed between the State and the
16 defendant that the State can produce evidence that, one, the
17 filling activity along the shoreline of 8401 Bay Road was
18 filling on state wetlands, as defined in Title 16 of the
19 Environment Article of the Annotated Code of Maryland; that the
20 defendant was required to obtain a license from the Maryland
21 Department of the Environment prior to placing any fill
22 material on state wetlands at 8401 Bay Road in Anne Arundel
23 County, Maryland; and that the defendant allowed the filling of
24 state wetlands despite the lack of a license to do so.

25 These are the facts upon which the State would rely

1 in this matter and to which the defendant has agreed. And I
2 have -- this statement of facts has also been reduced to
3 writing, if I may approach and provide that for the Court.

4 THE COURT: Yes, sir.

5 MR. PENNER: Thank you.

6 THE COURT: Is there anything you wish to say with
7 regard to this matter?

8 MR. : As to the statement of facts, Your
9 Honor?

10 THE COURT: Yes.

11 MR. : Not at this time.

12 THE COURT: Any motions at this time?

13 MR. : No, Your Honor.

14 THE COURT: The Court will enter a finding of guilty
15 as to count one. Count one is filling state wetlands without a
16 license.

17 MR. : Your Honor, shall we proceed to
18 sentencing then?

19 THE COURT: Yes. The question, are you going to nol
20 pros the other counts?

21 MR. PENNER: Your Honor, yes. However, as this
22 particular agreement has been set up, the State is prepared to
23 nol pros the following counts, but we are going to do that
24 following the imposition of sentence on this one count.

25 THE COURT: All right. I'll be glad to hear you.

1 MR. : Your Honor, first of all, I would
2 like to tender the \$10,000 civil fine payment to the State.
3 This is a cashier's check made payable to the Maryland Title
4 Wetlands Compensation Fund. And it specifies a particular
5 invoice number.

6 THE COURT: All right, sir. Anything else?

7 MR. : Yes, Your Honor. We would ask that
8 the Court abide by the agreement worked out between the parties
9 as to a period of unsupervised probation during which time
10 Mr. Gatewood can have the property returned to its proper
11 condition.

12 We would also like the Court to impose probation
13 before judgment at this time. And I would suggest that for the
14 following reasons. First of all, Your Honor, before you is a
15 man who has been a member of the Maryland judiciary for over 20
16 years, who has an impeccable record, no blemishes on his record
17 whatsoever.

18 And I think almost anyone who came before Your Honor
19 under such circumstances would receive probation before
20 judgment. In terms of hanging over his head whether or not the
21 remediation work is going to be done, first he's got the civil
22 case to make sure that that happens.

23 Secondly, let me say this, Your Honor: Mr. Gatewood
24 acquired this property in 1990. He largely built the house
25 with his own hands. He's put his blood, sweat and tears into

1 this property. He loves it dearly. He had to suffer through
2 Hurricane Fran and what that did to the shoreline. He got that
3 repaired in a way that was acceptable to the State.

4 Then he suffered through Hurricane Isabel. And that
5 did further damage to the shoreline, and Hugo. And he
6 proceeded in a way that he thought was similar to the way he
7 had proceeded in 1996 and 1997. The vast majority of the
8 material on that site were large chunks of concrete that he
9 thought would be acceptable.

10 Towards the tail end of the project, in an
11 unauthorized fashion, some people construction debris on the
12 site. And that is how that came to be there. That had not
13 been authorized by him. It certainly was not desired by him.
14 He loves this property. He would not foul the property in any
15 way by putting that kind of material there intentionally.

16 Your Honor, in light of his career, in light of
17 what he has done today, acknowledging the State's facts, in
18 fact acknowledging that he's paid the \$10,000 civil fine in a
19 timely fashion, we would submit to the Court that probation
20 before judgement today is absolutely appropriate so that we
21 wouldn't have to come back to the court on a motion to
22 modify.

23 Mr. Gatewood, you have the opportunity to say
24 anything you would like to say to the Court, if you want to
25 make a statement.

1 THE COURT: What is your comment with regard to a
2 PBJ today?

3 MR. PENNER: Your Honor, the State is opposed to a
4 PBJ today. As the Court recognized earlier, unsupervised
5 probation with nothing hanging over his head is really nothing.
6 In this case, the State has taken the somewhat unusual step in
7 recognizing the defendant's status of not seeking a period,
8 some period, of incarceration, or something, not even a
9 criminal fine hanging over his head.

10 Facing a cleanup of this scope, there is a need that
11 it be executed promptly with the appropriate personnel
12 overseeing it. And the State is firmly convinced that it is
13 important that the defendant's way of establishing his ability
14 to get a PBJ is that he do this work appropriately. And until
15 it is done, until it is done, it hasn't been done.

16 So the State opposes it.

17 THE COURT: How long do you think it's going to take
18 to do this work?

19 MR. : Mr. Dougherty could probably speak
20 better to that, Your Honor.

21 MR. DOUGHERTY: Hurricane season permitting, this
22 summer and early fall, Your Honor, assuming the approvals
23 happen in a fairly straightforward fashion.

24 MR. PENNER: And Your Honor, if I may add, at the
25 point -- although we are requesting a one-year period, at the

1 point that the job is done and they want to bring their motion
2 before the Court, the State would be prepared to come in and,
3 you know, participate at that point. It doesn't have to take a
4 whole year. If it's less than a year, we're happy.

5 MR. CHASE: Your Honor, if I might add --

6 THE COURT: Yes, sir, Mr. Chase.

7 MR. CHASE: Thank you, Your Honor. If I might add,
8 the Court should well know that Mr. Gatewood, when requested to
9 make repairs and do things in other instances, has always been
10 there to do it. And I might add to what the Court said
11 earlier, I think it is more of a --- hanging over him than if
12 somebody came in and violated his probation, move to strike his
13 probation before judgement, that would be more of a hammer over
14 him than having to come back to look for the probation before
15 judgment.

16 I think if the Court granted it to him today, that's
17 holding it over his head, because he understands where the
18 Court is coming from, that if he doesn't do what he's going to
19 do, then it will strike the probation. And based on his
20 judicial position, I think that would have more of an effect
21 and more control by the Court of him knowing that the State
22 could come in and file a motion for violation, or the Court
23 could issue a violation to remove that probation before
24 judgment. I think it's more than coming back to the Court.

25 I think I've seen, and I know the Court has seen

1 many times, where the Court has stricken probation before
2 judgment because the person didn't do what they were supposed
3 to do. And that is more of a stick than having to ask for
4 it.

5 Thank you, Your Honor.

6 MR. : And, Your Honor, no one is more
7 anxious that Mr. Gatewood to get this work under way. The plan
8 that has largely been approved already was submitted by him
9 through counsel before any of these three actions were filed.
10 And it's simply a matter of getting the final approval. And
11 he's raring to go on this.

12 I agree wholeheartedly with Mr. Chase. It would be
13 more of a hammer over his head to have the threat of the
14 probation before judgment taken away than having him, you know,
15 need to work for it in the first place.

16 Thank you.

17 THE COURT: Anything else from anybody?

18 (No response.)

19 THE COURT: The judgment and sentence of this Court
20 is that Mr. Gatewood is placed on one-year unsupervised
21 probation. The special conditions of the probation being that
22 the defendant shall complete all the work required by the site
23 remediation plan submitted by the defendant and approved by the
24 Maryland Department of the Environment Water Management
25 Administration and the U.S. Army Corps of Engineers, which plan

1 is specifically incorporated by reference.

2 The work shall be completed according to the
3 specifications described in the approved site mediation plan.
4 And the completion of the work shall be confirmed by both the
5 MDE and the code compliance program of Anne Arundel County
6 Department of Inspections and Permits.

7 And secondly that the defendant shall pay a \$10,000
8 civil fine to satisfy the penalty portion of the consent decree
9 resolving that civil complaint captioned MDE versus Gatewood,
10 et al., filed in this court in Case No. C-07-127156.

11 That being the sentence in this case. And, of
12 course, the defendant to pay whatever costs there are in this
13 case.

14 With regard to the probation before judgment, I'm
15 not going to grant that today. But I will tell you this, that
16 as soon as the work is completed satisfactorily, I'm willing to
17 grant that PBJ at that time.

18 MR. : And, Your Honor, at that time may we
19 also request that the unsupervised probation be terminated, as
20 well?

21 THE COURT: Absolutely.

22 MR. : Thank you.

23 THE COURT: All right. Do you want to advise him of
24 his rights? Oh, excuse me.

25 MR. PENNER: There was one procedural matter at this

1 time, Your Honor. The State will nol pros the remaining counts
2 of that criminal information.

3 THE COURT: Do you want to advise him of his
4 rights?

5 MR. : Yes, sir.

6 You have 90 days within which to ask the Court to
7 reconsider its sentence. You have 30 days to file a notice of
8 appeal.

9 THE COURT: Any questions?

10 MR. : No, thank you.

11 THE COURT: Thank you.

12 (A chorus of "Thank you, Your Honor.")

13 (Whereupon, the hearing was concluded.)

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

CompuScribe hereby certifies that the attached pages represent an accurate transcript of the duplicated electronic sound recording of the proceedings in the Circuit Court for Anne Arundel County in the matters of:

Case No. K-2008-000116

STATE OF MARYLAND

v.

ASKEW W. GATEWOOD, JR.

Case No. C-2007-127156

STATE OF MARYLAND

DEPARTMENT OF THE ENVIRONMENT

v.

ASKEW W. GATEWOOD, JR.

Case No. C-2007-127157

ANNE ARUNDEL COUNTY, MARYLAND

v.

ASKEW W. GATEWOOD, JR., et al

By:

Gail A. Williams
Transcriber

Date